

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF ILLINOIS

In Re)	
)	In Bankruptcy
TERRY F. DELONG and)	
KELLIE A. DELONG,)	Case No. 03-74355
)	
Debtors.)	

OPINION

The issue before the Court is whether the Debtors filed their Chapter 13 petition prior to a foreclosure sale in state court.

The Debtors, Terry and Kellie Delong, owned property located at Rural Route One, Box 305, Greenvew, Illinois. Union Planters Bank held a mortgage on the property. On February 5, 2003, the Bank filed a complaint to foreclose the mortgage on the property. A Judgment for Foreclosure and Sale was entered on May 30, 2003. The foreclosure sale was set for 9:00 A.M., Wednesday, September 17, 2003, and the property was sold at 9:30 A.M. The state court entered an Order approving the sale on September 17, 2003.

At 10:24 A.M. on September 17, 2003, less than an hour after the property was sold, the Debtors' Chapter 13 petition was received and file-stamped by the Clerk of the Bankruptcy Court.

On October 21, 2003, Union Planters filed a Motion to Annual the Automatic Stay and/or Alternatively Motion for Relief from the

Automatic Stay. Relying on the recent Seventh Circuit decision in In re Colon, 319 F.3d 912 (7th Cir. 2003), Union Planters correctly states that the Debtor did not retain the right to reinstate or pay off the mortgage because the foreclosure sale was consummated prior to the filing of the Debtors' bankruptcy petition.

The Debtors concede that their bankruptcy petition was file-stamped by the Bankruptcy Court after the foreclosure sale. However, they argue that their petition should be deemed filed as of the previous Friday - September 12, 2003 - when they placed it in the mail. According to the Debtors' attorney, the bankruptcy petition was placed in the mail in Urbana, Illinois, postage prepaid and properly addressed to the Bankruptcy Court in Springfield, Illinois on Friday, September 12, 2003. The attorney's office checked PACER on Monday, Tuesday, and early Wednesday morning to see if their petition was on file. It was not. Therefore, the attorney contacted someone in Springfield to hand-deliver the petition with the Court. This was accomplished at 10:24 A.M. The Court never received the petition that was purportedly mailed on September 12, 2003.

The Debtors argue that, under the "mailbox rule", their petition should be deemed filed at the moment it was placed in the mail addressed to the Clerk of the Bankruptcy Court. This argument is not supported by the Bankruptcy Code or the applicable case law.

Under the mailbox rule, a document is deemed filed when it is deposited in the mail. The application of this rule is generally limited to cases involving *pro se* prisoners, and is based on the rationale that *pro se* prisoners lose control over and contact with their documents once they are delivered to prison authorities. Houston v. Lack, 487 U.S. 266, 274, 108 S.Ct. 2379, 2384 (1988); Freeman v. Page, 208 F.3d 572 (7th Cir. 2000). The mailbox rule has been rejected in other "situations because of the difficulty in determining the time of deposit." In re Flanagan, 999 F.2d 753, 757 (3rd Cir. 1993). This is especially true in a case such as this one where the document was never received by the Court.

The relevant sections of the Bankruptcy Code make it clear that a filing is effective when it is received by the Court, not when it is mailed to the Court:

A voluntary case under a chapter of this title is commenced by the filing with the court of a petition under such chapter by an entity that may be a debt under such chapter. 11 U.S.C. § 301.

A petition commencing a case under the code shall be filed with the clerk. Bankruptcy Rule 1002

In re Butchman, 4 B.R. 379 (Bankr. S.D. N.Y. 1980) is directly on point. In Butchman, the debtors mailed their Chapter 13 petition to the Bankruptcy Court a few days prior to the foreclosure sale. The real estate sold by foreclosure sale at 10:00 A.M. on April 14, 1980; the Chapter 13 petition was not

received and docketed by the Bankruptcy Court until 12:04 P.M. on April 14, 1980, approximately two hours later. The Court held that the time of filing for the purpose of determining the debtor's interest in property under § 541 was the time the petition was received and docketed by the Bankruptcy Court. The court reasoned that the act of mailing the petition merely constituted the means by which the debtor's attorney chose to transmit the petition for filing which was concluded by stamping the petition filed upon receipt. See In re McMeans, 209 B.R. 253, 255 (Bankr. N.D. Ala. 1997) (Petition was filed when it was stamped "filed" by bankruptcy clerk, not upon its transmission to the clerk's office by facsimile); Cooper v. City of Ashland, 871 F.2d 104, 105 (9th Cir. 1989) (When papers are mailed to the clerk's office, filing is complete only upon the clerk's receipt of them); Torras Herreria v. M/V Timur Star, 803 F.2d 215, 216 (6th Cir. 1986) ("Filings reaching the clerk's office after a deadline are untimely, even if mailed before the deadline.")

For the foregoing reasons, the Court finds that the Debtor did not have an interest in real estate located at Rural Route One, Box 305, Greenvew, Illinois, at the time the Debtors filed their Chapter 13 petition. Therefore, the automatic stay of § 362 will be lifted with respect to this property.

This Opinion is to serve as Findings of Fact and Conclusions

of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

ENTERED: December 16, 2003

LARRY LESSEN
UNITED STATES BANKRUPTCY JUDGE

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CERTIFICATION OF MAILING

The undersigned, deputy clerk of the United States Bankruptcy Court, hereby certifies that a copy of this Opinion was mailed this date to the parties listed herein.

Dated: December 16, 2003

In Re)
) In Bankruptcy
TERRY F. DELONG and)
KELLIE A. DELONG,) Case No. 03-74355
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Debtors.)

For the reasons set forth in an Opinion entered this day,

IT IS HEREBY ORDERED that the automatic stay in this case is modified and leave is hereby granted to Union Planters Bank to proceed with the foreclosure of the mortgage on the real estate commonly known as Rural Route One, Box 305, Greenvview, Illinois.

LARRY LESSEN
UNITED STATES BANKRUPTCY JUDGE

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Decatur, IL 62525

U.S. Trustee
401 Main St. #1100
Peoria, IL 61602

The undersigned, deputy clerk of the United States Bankruptcy Court, hereby certifies that a copy of this Order was mailed this date to the parties listed herein.

Dated: December 16, 2003